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PART II — Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 9th May, 2003:—

I

Bill No. XXXIX of 2003

A Bill further to amend the Citizenship Act, 1955.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Citizenship (Amendment) Act, 2003.

Short title and
commencement

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

57 of 1955.

2. In section 2 of the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in sub-section (1),—

Amendment
of section 2.

(i) for clauses (b) and (c) and the proviso to clause (c), the following clause shall be substituted, namely:—

'(b) "illegal migrant" means a foreigner who has entered into India—

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;'

(ii) after clause (e), the following clause shall be inserted, namely:—

'(ee) "overseas citizen of India" means a person of Indian origin being a citizen of a specified country, or an Indian citizen, who is registered as an overseas citizen of India by the Central Government under sub-section (1) of section 7A;'

(iii) after clause (g), the following clause shall be inserted, namely:—

'(gg) "specified country" means a country specified in the Fourth Schedule;'

Substitution
of new section
for section 3.

3. For section 3 of the principal Act, the following section shall be substituted, namely:—

Citizenship by
birth.

"3. (1) Except as provided in sub-section (2), every person born in India—

(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;

(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where—

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth,

shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—

(a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy."

Amendment
of section 4.

4. In section 4 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) A person born outside India shall be a citizen of India by descent,—

(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or

(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section, unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India:

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003, a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,—

(i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003, whichever is later; or

(ii) with the permission of the Central Government, after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of this section shall not cease to be a citizen of India if within six months of attaining full age he makes an application for registration as an overseas citizen of India under this Act and until such application is disposed of by the Central Government."

5. In section 5 of the principal Act,—

(a) for sub-section (1), the following shall be substituted, namely:—

"(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

Amendment
of section 5.

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (f) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for two years before making an application for registration.

Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947."

(b) after sub-section (5), the following sub-section shall be inserted, namely:—

"(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption."

Amendment
of section 6.

6. In section 6 of the principal Act, in sub-section (1), for the words "who is not a citizen of a country specified in the First Schedule", the words "not being an illegal migrant" shall be substituted.

Insertion of
heading and
new sections
7A, 7B, 7C
and 7D.
Registration
of overseas
citizens.

7. After section 7 of the principal Act, the following heading and sections shall be inserted, namely:—

'OVERSEAS CITIZENSHIP

7A. (1) The Central Government may, subject to such conditions and restrictions including the condition of reciprocity as may be prescribed, on an application made in this behalf, register any person as an overseas citizen of India if—

(a) that person is of Indian origin of full age and capacity who is a citizen of a specified country; or

(b) that person is of full age and capacity who has obtained the citizenship of a specified country on or after the commencement of the Citizenship (Amendment) Act, 2003 and who was a citizen of India immediately before such commencement; or

(c) that person is a minor of a person mentioned in clause (a) or clause (b):

Provided that in case of a person mentioned in clause (b), such application shall be made within a period of six months from the date on which he has obtained the citizenship of a specified country.

(2) The person registered as an overseas citizen of India under sub-section (1) shall on taking the oath of allegiance specified in the Second Schedule be an overseas citizen of India as from the date on which he is so registered.

(3) No person who has been deprived of his Indian citizenship under this Act shall be registered as an overseas citizen of India under sub-section (1) except by an order of the Central Government.

Explanation.—For the purposes of this section and sections 7B, 7C and 7D, the expression "person of Indian origin" shall mean a citizen of another country who,—

(i) was eligible to become a citizen of India at the time of the commencement of the Constitution;

(ii) belonged to a territory that became part of India after the 15th day of August, 1947; and

(iii) the children and grand-children of a person covered under clauses (i) and (ii), but does not include a person who is or had been at any time a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify.

7B. (1) Notwithstanding anything contained in any other law for the time being in force, an overseas citizen of India shall be entitled to such rights [other than the rights specified under sub-section (2)] as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Conferment
of rights on
overseas
citizens of
India.

(2) An overseas citizen of India shall not be entitled to the rights conferred on a citizen of India—

(a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;

(b) under article 58 of the Constitution for election as President;

(c) under article 66 of the Constitution for election of Vice-President;

(d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;

(e) under article 217 of the Constitution for appointment as a Judge of the High Court;

43 of 1950.

(f) under section 16 of the Representation of the People Act, 1950 in regard to registration as a voter;

43 of 1951.

(g) under sections 3 and 4 of the Representation of the People Act, 1951 with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;

43 of 1951.

(h) under sections 5, 5A and 6 of the Representation of the People Act, 1951 with regard to the eligibility for being a member of the Legislative Assembly or a Legislative Council, as the case may be, of a State;

(i) for appointment to public services and posts in connection with the affairs of the Union or of any State except for appointment in such services and posts as the Central Government may by special order in that behalf specify.

(3) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

7C. (1) If any overseas citizen of India of full age and capacity makes in the prescribed manner a declaration renouncing his overseas citizenship of India, the declaration shall be registered by the Central Government, and; upon such registration, that person shall cease to be an overseas citizen of India.

Renunciation
of overseas
citizenship.

(2) Where a person ceases to be an overseas citizen of India under sub-section (1), every minor child of that person registered as an overseas citizen of India, shall thereupon cease to be an overseas citizen of India.

Cancellation
of registration
as overseas
citizen of
India.

7D. The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A if it is satisfied that—

(a) the registration as an overseas citizen of India was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) the overseas citizen of India has shown himself by any act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or

(c) the overseas citizen of India has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) the overseas citizen of India has, within five years after registration under sub-section (1) of section 7A has been sentenced to imprisonment for a term of not less than two years; or

(e) it is necessary so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public.

Amendment
of section 8.

8. In section 8 of the principal Act,—

(a) in sub-section (1), the words "who is also a citizen or national of another country" shall be omitted;

(b) in the proviso to sub-section (2), after the word "declaration", the words "in the prescribed form and manner" shall be inserted;

(c) sub-section (3) shall be omitted.

Amendment
of section 9.

9. In section 9 of the principal Act,—

(a) in sub-section (1), after the proviso, the following proviso shall be inserted, namely:

"Provided further that after the commencement of the Citizenship (Amendment) Act, 2003, any citizen of India who voluntarily acquires the citizenship of a specified country shall not cease to be a citizen of India, if within six months thereof he makes an application for registration as an overseas citizen of India under sub-section (1) of section 7A, until such application is disposed of by the Central Government.";

(b) in sub-section (2) for the word "person", the words "citizen of India" shall be substituted.

Omission of
sections 11
and 12.

10. Sections 11 and 12 of the principal Act shall be omitted.

Amendment
of section 14.

11. In section 14 of the principal Act, for the words and figures "sections 5 and 6", the words, figures and letter "sections 5, 6 and 7A" shall be substituted.

Insertion of
new section
14A.
Issue of
national
identity cards.

12. After section 14 of the principal Act, the following section shall be inserted, namely:—

"14A. (1) The Central Government may compulsorily register every citizen of India and issue national identity card to him.

(2) The procedure to be followed in compulsory registration of the citizens of India, the form and manner of making application, the documents and other evidence

by which such application shall be accompanied and the fees payable in respect of such application, the form of national identity card and other details shall be such as may be prescribed.”.

13. After section 15 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
15A.

“15A. (1) Any person aggrieved by an order made by the Central Government, may within thirty days from the date of such order, make an application for review of such order:

Review.

Provided that the Central Government may entertain application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) On receipt of an application under sub-section (1), the Central Government shall, make such order as it deems fit, and the decision of the Central Government on such review shall be final.”.

14. In section 17 of the principal Act,—

Amendment
of section 17.

(a) for the words “six months”, the words “five years” shall be substituted;

(b) for the words “with fine”, the words “with fine which may extend to fifty thousand rupees” shall be substituted.

15. In section 18 of the principal Act,—

Amendment
of section 18.

(i) in sub-section (2),—

(a) after clause (a), the following clause shall be inserted, namely:—

“(aa) the form and manner in which a declaration under sub-section (1) of section 4 shall be made;”;

(b) after clause (i), the following clause shall be inserted, namely:—

“(ia) the procedure to be followed in compulsory enrolment of a citizen of India, the form and manner for making applications, the documents and other evidence by which such application shall be accompanied and the fees payable in respect of such application, the form of national citizenship identity card and other details, under sub-section (2) of section 14A;”;

(ii) in sub-section (3), the following proviso shall be inserted, namely:—

“Provided that any rule made in respect of a matter specified in clause (ia) of sub-section (2) may provide that a breach thereof shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.”.

16. The First Schedule to the principal Act shall be omitted.

Omission of
First
Schedule.

17. For the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:—

Substitution
of Second
Schedule by a
new
Schedule.

“THE SECOND SCHEDULE [See sections 5(2), 6(2) and 7A(2)]

OATH OF ALLEGIANCE

I

I, A/B.....do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully observe the laws of India and fulfil my duties as a citizen of India.

II

I, A/B.....do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully observe the laws of India and fulfil my duties as an overseas citizen of India.”.

Amendment
of Third
Schedule.

18. In the Third Schedule to the principal Act,—

(a) in the opening portion, the words “who is not a citizen of a country specified in the First Schedule” shall be omitted;

(b) in clause (b), for the words “he has renounced the citizenship of that country in accordance with the law therein in force in that behalf and has notified such renunciation to the Central Government”, the words “he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted” shall be substituted;

(c) in clause (d),—

(i) for the words “twelve years”, the words “fourteen years” shall be substituted;

(ii) for the words “nine years”, the words “eleven years” shall be substituted;

(d) in the proviso, in clause (ii), for the words “thirteen years”, the words “fifteen years” shall be substituted.

Insertion of
new Fourth
Schedule.

19. After the Third Schedule to the principal Act, the following Schedule shall be inserted, namely:—

“THE FOURTH SCHEDULE
[See section 2(1)(gg)]

1. Australia.
2. Canada.
3. Finland.
4. Ireland.
5. Italy.
6. Netherlands.
7. United Kingdom.
8. United States of America.”.

STATEMENT OF OBJECTS AND REASONS

The Citizenship Act, 1955 which provides for the acquisition of citizenship, after the commencement of the Constitution by birth, descent, registration, naturalisation and incorporation of territory under certain circumstances, and also provides for the termination and deprivation of citizenship, was among those 109 Central Acts identified for a review by the Commission on Review of Administrative Laws constituted by the Central Government under the Chairmanship of Shri P.C. Jain in 1998. Subsequently, the High Level Committee on Indian Diaspora constituted by the Central Government, *inter alia*, recommended the amendment of this Act to provide for the grant of dual citizenship to persons of Indian origin belonging to certain specified countries. The Central Government has accordingly decided to make provisions for the grant of dual citizenship and has taken the opportunity of introducing a scheme for the compulsory registration of every citizen of India, and for this purpose to issue national identity cards.

2. The above objects are proposed to be achieved, *inter alia*, by amending provisions of the Citizenship Act so as to—

(i) make acquisition of Indian citizenship by registration and naturalisation more stringent;

(ii) prevent illegal migrants from becoming eligible for Indian citizenship;

(iii) simplify the procedure to facilitate the re-acquisition of Indian citizenship by persons of full age who are children of Indian citizens, and former citizens of independent India;

(iv) provide for the grant of overseas citizenship of India to persons of Indian origin belonging to specified countries, and Indian citizens who choose to acquire the citizenship of any of these countries at a later date;

(v) provide for the compulsory registration and issue of a national identity card to all citizens of India;

(vi) enhance the penalty for violation of its provisions, as well as the rules framed under it; and

(vii) to omit all provisions recognizing, or relating to the Commonwealth citizenship from the Act.

3. The Bill seeks to achieve the above objects.

L. K. ADVANI.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to amend section 4 of the Citizenship Act, 1955(hereafter referred to as the Act) relating to citizenship by descent. The said amendment, *inter alia*, empowers the Central Government to lay down, by rules, the form and manner in which registration of birth at an Indian consulate shall be made and the form and manner of declaration by parents for registration of births of children at such consulates.

2. Clause 5 seeks to amend section 5 of the Act relating to citizenship by registration. The proposed sub-section (1) of section 5 empowers the Central Government to make rules laying down the conditions and restrictions to register as a citizen of India any person who is not an illegal migrant.

3. Clause 7 of the Bill seeks to insert new sections 7A, 7B, 7C and 7D in the Act relating to overseas citizenship of India. Sub-section (1) of proposed new section 7A empowers the Central Government to prescribe, by rules, the conditions and restrictions for making application by certain categories of persons for registration as "overseas citizen of India".

4. Proposed new section 7C empowers the Central Government to make rules relating to the manner of declaration of renouncing overseas citizenship of India.

5. Clause 8 of the Bill seeks to amend section 8 of the Act relating to renunciation of citizenship, *inter alia*, to empower the Central Government to lay down by rules, the form and manner of making declarations by children on attaining full age for resumption of Indian citizenship.

6. Clause 12 of the Bill seeks to insert a new section 14A in the Act relating to issue of national identity cards to all citizens of India. Under new section 14A the Central Government may make rules to lay down the procedure for compulsory registration of citizens of India, the form and manner in which such applications may be made and the documents, other particulars and fee which may accompany such applications.

7. The matters in respect of which rules may be made under the aforesaid provisions are generally matters of procedure or administrative details and it is not possible to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

II

Bill No. XL of 2003

A Bill further to amend the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Marriage Laws (Amendment) Act, 2003.

Short title.

CHAPTER II

AMENDMENTS TO THE SPECIAL MARRIAGE ACT, 1954

43 of 1954.

2. In the Special Marriage Act, 1954 (hereinafter referred to as the Special Marriage Act), in section 31, in sub-section (1), after clause (iii), the following clause shall be inserted, namely:—

Amendment of section 31.

“(iiiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or”.

Amendment
of section 39.

3. In section 39 of the Special Marriage Act, in sub-section (4), for the words "period of thirty days", the words "period of ninety days" shall be substituted.

CHAPTER III

AMENDMENTS TO THE HINDU MARRIAGE ACT, 1955

Amendment
of section 19.

4. In the Hindu Marriage Act, 1955 (hereinafter referred to as the Hindu Marriage Act), in section 19, in sub-section (1), after clause (iii), the following clause shall be inserted, namely :—

"(iiiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or".

Amendment
of section 28.

5. In section 28 of the Hindu Marriage Act, in sub-section (4), for the words "period of thirty days", the words "period of ninety days" shall be substituted.

CHAPTER IV

MISCELLANEOUS

Transitory
provision.

6. All decrees and orders made by the court in any proceedings under the Special Marriage Act or the Hindu Marriage Act shall be governed under the provisions contained in section 3 or section 5 of this Act, as the case may be, as if this Act came into operation at the time of the institution of the suit:

Provided that nothing in this section shall apply to a decree or order in which the time for appealing has expired under the Special Marriage Act or the Hindu Marriage Act at the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS

The Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 provide that a petition for relief under the provisions of these Acts shall be presented to the District Court within the limits of whose original civil jurisdiction the marriage was solemnized or the respondent, at the time of the presentation of the petition, resided or the parties to the marriage last resided together or the petitioner was residing at the time of the presentation of the petition, in a case where the respondent was at the time residing outside the territories to which these Acts extended or had not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he were alive. However, these provisions are not considered adequate or fair as far the women are concerned. Under the existing provisions, a petition cannot be filed by the aggrieved wife to the District Court within the local limits of whose ordinary jurisdiction she may be residing. In view thereof, the Government has decided to amend the provisions of these Acts so that the wife can also file petition in the District Court within local limits of whose jurisdiction she may be residing. The proposed amendments to sections 31 and 19 of the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 respectively are based on the recommendations of the Law Commission of India and the National Commission for Women.

2. The Government has also decided to amend section 39 of the Special Marriage Act, 1954 and section 28 of the Hindu Marriage Act, 1955 to provide respectively that the parties to a matrimonial suit could prefer appeal within a period of ninety days instead of thirty days. This amendment is based on the observations made by the Supreme Court in a judgment delivered recently. The amendment to these provisions is proposed so that unscrupulous litigant spouses are not facilitated to frustrate the marriages, taking advantage of the inadequate period provided in law.

3. The Bill seeks to achieve the above objects.

ARUN JAITLEY.

III

BILL NO. XLI OF 2003

A Bill further to amend the Railway Protection Force Act, 1957.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

Short title
and com-
mencement.

1. (1) This Act may be called the Railway Protection Force (Amendment) Act, 2003.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment
of long title.

2. In the Railway Protection Force Act, 1957 (hereinafter referred to as the principal Act), in the long title, for the words “railway property”, the words “railway property, passenger area and passengers” shall be substituted. 23 of 1957.

Amendment
of section 2.

3. In section 2 of the principal Act, after clause (c), the following clauses shall be inserted, namely:—

‘(ca) “passenger” shall have the meaning assigned to it in the Railways Act, 1989;

24 of 1989.

(cb) "passenger area" shall include railway platform, train, yard and such other area as is frequently visited by passengers;'

4. For section 11 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 11.

"11. It shall be the duty of every superior officer and member of the Force—

Duties of
members of
Force.

(a) promptly to execute all orders lawfully issued to him by his superior authority;

(b) to protect and safeguard railway property, passenger area and passengers;

(c) to remove any obstruction in the movement of railway property or passenger area; and

(d) to do any other act conducive to the better protection and security of railway property, passenger area and passengers."

5. In section 12 of the principal Act, for the words "railway property" wherever they occur, the words "railway property, passenger area and passengers" shall be substituted.

Amendment
of section 12.

6. In section 14 of the principal Act, for the words "to a police officer", the words "to a police officer together with a detailed report of the circumstances leading to the arrest of such person" shall be substituted.

Amendment
of section 14.

STATEMENT OF OBJECTS AND REASONS

The problem relating to security of the railway passengers has increased manifold during the last decade. It is difficult for the State Governments to provide adequate security cover to the railways due to a number of constraints. It has, therefore, become necessary that the Ministry of Railways should supplement the efforts of the State Governments in ensuring better security to the railway passengers.

2. As of now, the Railway Protection Force is empowered to investigate offences relating to unlawful possession of only the railway property. It is now proposed to enable the Railway Protection Force to also perform these functions in relation to the passenger area and passengers so that the officers authorised by the Central Government can take cognizance of and launch prosecution against offenders in respect of the offences specified in the Railways Act, 1989. It is, accordingly, proposed to amend the Railway Protection Force Act, 1957.

3. The Bill seeks to achieve the above objects.

NITISH KUMAR.

IV

BILL NO. XLII OF 2003

A Bill further to amend the Railways Act, 1989.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Railways (Second Amendment) Act, 2003.

Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

24 of 1989.

2. In section 2 of the Railways Act, 1989 (hereinafter referred to as the principal Act),—

Amendment
of section 2.

(a) after clause (26), the following clause shall be inserted, namely:—

“(26A) “officer authorised” means an officer authorised by the Central Government under sub-section (2) of section 179;”;

(b) in clause (34), after the words “service of a railway”, the following shall be inserted, namely:—

23 of 1957.

“including member of the Railway Protection Force appointed under clause (c) of sub-section (1) of section 2 of the Railway Protection Force Act, 1957”.

Substitution
of new
section for
section 179.
Arrest for
offences
under certain
sections.

3. For section 179 of the principal Act, the following section shall be substituted, namely:—

“179. (1) If any person commits any offence mentioned in sections 150 to 152, he may be arrested without warrant or other written authority by any railway servant or police officer not below the rank of a head constable.

(2) If any person commits any offence mentioned in sections 137 to 139, 141 to 147, 153 to 157, 159 to 167 and 172 to 176, he may be arrested, without warrant or other written authority, by the officer authorised by a notified order of the Central Government.

(3) The railway servant or the police officer or the officer authorised, as the case may be, may call to his aid any other person to effect the arrest under sub-section (1) or sub-section (2), as the case may be.

(4) Any person so arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.”

Amendment
of section
180.

4. In section 180 of the principal Act, —

(a) in sub-section (1), —

(i) for the word and figures “section 179”, the words, brackets and figures “sub-section (2) of section 179” shall be substituted;

(ii) for the words “any railway servant authorised in this behalf or any police officer not below the rank of a head constable”, the words “the officer authorised” shall be substituted;

(b) in sub-section (2), for the words “The railway servant or the police officer”, the words “The officer authorised” shall be substituted.

Insertion of
new sections
180A to 180G.

5. After section 180 of the principal Act, the following sections shall be inserted, namely:—

“180A. For ascertaining facts and circumstances of a case, the officer authorised may make an inquiry into the commission of an offence mentioned in sub-section (2) of section 179 and may file a complaint in the competent court if the offence is found to have been committed.

Inquiry by
officer
authorised to
ascertain
commission
of offence

180B. While making an inquiry, the officer authorised shall have power to, —

(i) summon and enforce the attendance of any person and record his statement;

(ii) require the discovery and production of any document;

(iii) requisition any public record or copy thereof from any office, authority or person;

(iv) enter and search any premises or person and seize any property or document which may be relevant to the subject-matter of the inquiry.

180C. Every person arrested for an offence punishable under sub-section (2) of section 179 shall, if the arrest was made by a person other than the officer authorised, be forwarded, without delay, to such officer.

Disposal of
persons
arrested.

180D. (1) When any person is arrested by the officer authorised for an offence punishable under this Act, such officer shall proceed to inquire into the charge against such person.

Inquiry how
to be made
against
arrested
person.

2 of 1974.

(2) For this purpose, the officer authorised may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to the provisions of the Code of Criminal Procedure, 1973, when investigating a cognizable case:

Provided that —

(a) if the officer authorised is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer authorised that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer authorised may direct, to appear, if and when so required, before the Magistrate having jurisdiction.

2 of 1974.

180E. All searches, seizures and arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating respectively to searches and arrests made under that Code.

Search, seizure and arrest how to be made.

180F. No court shall take cognizance of an offence mentioned in sub-section (2) of section 179 except on a complaint made by the officer authorised.

Cognizance by Court on a complaint made by officer authorised.

180G. Whoever intentionally insults or causes any interruption in the inquiry proceedings or deliberately makes a false statement before the inquiring officer shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Punishment for certain offences in relation to inquiry.

STATEMENT OF OBJECTS AND REASONS

The railway administration has at its disposal seventy thousand personnel of the Railway Protection Force which is an armed force of the Union. The Railway Protection Force has been given limited powers under the Railway Property (Unlawful Possession) Act, 1966 to take action against any person who is found in unlawful possession of railway property. However, the Railway Protection Force is not able to actively help the railway administration in dealing with day to day problems and to ensure smooth running of trains. Though the Railways Act, 1989 empowers the railway servants, including a Member of the Railway Protection Force, to arrest without warrant the persons committing offences mentioned in section 179 of the said Act and to produce them before the nearest Magistrate, such persons are not empowered to either investigate or inquire into cases or launch prosecution in a court of law. These functions are performed by the State police.

2. For effectively dealing with certain offences under the Railways Act, 1989, it is proposed that the officers authorised by the Central Government may be empowered to inquire and launch prosecution against the persons committing offences directly related to the functioning of the railways by amending the said Act. It is also proposed to empower these officers to search and seize any property and to file complaint in a court of competent jurisdiction in respect of these offences. The authorised officers would not have the power in respect of certain serious offences namely, offences under sections 150 to 152 of the Railways Act, 1989.

3. The Bill seeks to achieve the above objects.

NITISH KUMAR.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to empower the Central Government to issue notification for authorising an officer to take cognizance of certain offences under the Railways Act, 1989. The power to issue a notification for taking cognizance of offences would not pertain to any matter of substance and as such the delegation of legislative power involved there is of a normal character.

YOGENDRA NARAIN,
Secretary-General.

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